

JEFFERSON COUNTY COMMISSIONERS
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TOM LYTGOE, CHAIR

CHUCK NOTBOHM

KEN WEBER

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
November 1, 2005**

Present: Commissioners Lythgoe, Notbohm and Weber; Harold Stepper, County Planner; Steve Marquis, Under Sheriff; Matt Johnson, County Attorney; Lonnie Whitaker, Bob Sims, Danica Younken, Bob Donat, Michelle Popp, Dean & Betty Ellis, Mark Krpan, Ted Schuele, Shane Schmaus, Jan Anderson, *Boulder Monitor/Jefferson County Courier*

REPORTS

Receipt of approval of records destruction document from Clerk and Recorder.

CALENDAR REVIEW

11/2 Meeting with Lewis & Clark County Commissioners - 10:00
11/3 Whitehall Chamber - noon
JLDC - Whitehall - 2:00

COMMISSION REPORTS

SOUTH HELENA INTERCHANGE

Commissioner Lythgoe reported that at a meeting regarding the South Helena Interchange the preceding week, he learned that the project has been moved up to summer 2006.

HEALTH BOARD

Commissioner Lythgoe reported on the Health Board meeting held on Thursday night. The Health Nurse Supervisor position closed on Friday, and the Board has received some applications.

CENTRAL SERVICE AREA

Commissioner Weber stated that he attended a central service area authority meeting in Helena on Friday. They are still struggling with how to define the boundaries.

JUVENILE DETENTION

Commissioner Notbohm reported that he took part in a conference call on Thursday for the November 1, 2005 minutes.wpd

Southwest Regional Juvenile Detention Board. He stated that there are a couple of counties that are already in the red. There are also problems with the facility being full because of federal prisoners. They will be having another meeting soon to discuss this further.

CORRESPONDENCE

Commissioner Lythgoe stated that the Commission received an e-mail from Harold Blattie regarding a work session at Fish, Wildlife and Parks regarding bridge access. Commissioner Notbohm stated that he is thinking of going, although this hasn't been much of an issue in Jefferson County.

Commissioner Lythgoe stated that the Department of Administration has a GIS database to compile and coordinate road information in all counties. Commissioner Weber stated that he will follow up on this. Commissioner Lythgoe asked him to find out what Jefferson County's obligation is, and to discuss this with Carl.

Commissioner Weber stated that there was one action item that he took upon himself to give to Ben. It was regarding a meeting on the 18th to discuss DEQ's new laws for solid waste management in Montana.

Commissioner Notbohm stated that there is an employee leaving service that has requested that the County make up the difference for his PERS. He stated that this should be on an agenda. Commissioner Lythgoe asked if the Commission has received a formal request yet. It was stated that no request has been received. Commissioner Lythgoe stated that they will wait until a formal request is received.

SUBDIVISION REVIEW

PRELIMINARY PLAT APPROVAL - S & C #3 MINOR

Harold Stepper, County Planner, presented his staff report and stated that the findings of fact and conditions of approval are pretty standard. He did make note of condition of approval number 7, which stated in part *"All proposed roads within the subdivision will be designed and constructed to Jefferson County Road Standards. Access to S & C No. 3 Minor Subdivision shall require that Sheep Camp Road has access through S & C No. 1 Minor Subdivision and be designed and constructed to Jefferson County Road Standards with all rules, regulations, and permits complied with by the developer at all times. An approach permit for the driveway will need to be obtained from the Road Department Office and filled out appropriately in order for the driveway to be attached to Sheep Camp Road."*

Harold recommended that preliminary plat approval be granted. Commissioner Lythgoe asked if the preliminary plat document states that the roads have to be approved by the road supervisor. Harold stated that it indicates the road supervisor or a designated engineer. Commissioner Lythgoe asked if an engineer has looked at the roads yet. Harold stated no, not to his knowledge. Commissioner Notbohm stated that Mr. Donat has submitted a letter and requested that it be read. Commissioner Weber read the letter. Commissioner Lythgoe asked Harold if he had any

comments. Harold stated that he received Mr. Donat's letter right before the meeting, and there is no way that he could have interjected his requests into the conditions of approval.

Bob Donat stated that when he went to the Planning Board meeting, he was handed a copy of the preliminary plat approval. The conditions of approval in this document have changed. Per his dealings with Jefferson County, he would like all requirements in writing. He also stated that he would like to put this off until he has time to read and review this document. Commissioner Weber asked Bob if he is requesting that the Commission table this item. Bob stated that this was his request. Harold stated that it would take him some time to make the changes, and he will have to discuss things with Ben. Commissioner Lythgoe stated that in his experience, approach permits are much quicker than encroachment permits. Commissioner Weber asked Bob if he is willing to waive the 30-day time frame. Bob stated that he would be willing to put this out 35 days; he is uncomfortable that the document has changed in the past two weeks. Commissioner Weber moved to table the preliminary plat approvals for S&C #3 and #4 for 35 days or less, to work out any issues that have arisen at this meeting. Commissioner Lythgoe seconded. The motion carried.

Matt Johnson, County Attorney, stated that, for the record, he doesn't think that any preliminary plat approval from the Planning Board is a set document. The changes made are allowable and the Commission can impose any changes they feel are necessary.

PRELIMINARY PLAT APPROVAL - LOMBARDI MINOR SUBDIVISION

Harold Stepper, County Planner, presented his staff report. He stated that the findings of fact are standard, and noted that this is a working farm and ranch, and will continue as such. Harold recommended that preliminary plat approval be granted. Commissioner Notbohm moved to grant preliminary plat approval. Commissioner Weber seconded. The motion carried.

PRELIMINARY PLAT APPROVAL - WIEFERICH MINOR SUBDIVISION

Harold presented his staff report, and stated that the findings of fact and conditions of approval are standard. He recommended that preliminary plat approval be granted. Commissioner Weber stated that it looks from the plat that there are two wells on lot 1 and only one septic. Harold stated that there are two well and two septic; this will be cleared up on the final plat. He noted that the sanitaries have already been lifted. Commissioner Weber moved to grant preliminary plat approval. Commissioner Notbohm seconded. The motion carried.

PRELIMINARY PLAT APPROVAL - SUCHY HILLS MINOR SUBDIVISION

Harold presented his staff report, stating that the findings of fact and conditions of approval are standard. He recommended that preliminary plat approval be granted. Commissioner Weber stated that he is concerned, after looking at the plat, that there is a 40-foot easement and a 20-foot easement, but no 60-foot easement. Harold stated that these are basically driveways, and noted that Ben is comfortable with this. Commissioner Weber moved to grant preliminary plat approval. Commissioner Notbohm seconded. The motion carried.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

DISCUSS AND DECIDE ON COUNTY OWNERSHIP OF UPPER JACKSON CREEK ROAD

Commissioner Lythgoe stated that while the agenda states there will be a decision on this today, they will be discussing it only. He said what precipitated this discuss is a question on how far the county road extends. The resolution adopted in 2002 defines the road up to the Armagost property, but there has been discuss about whether the road is a county road up to Schuele's. The position of the County, per the adopted resolution, is that it is a county road up to the Armagost property. The other issue of whether the road is a county road from the Armagost property to the Schuele property line still requires some research. Some research has been done, but they were unable to pull it all together before this meeting. Commissioner Lythgoe stated that there is a history of the Schuele family using the road to access their property for 100 years; there is no other access to the property. There is also some indication that the county road continued through the Armagost property and through the Schuele property and was abandoned on the Schuele property in the 1940s. Commissioner Lythgoe asked if anyone in attendance can shed any light on this.

Ted Schuele stated that when his father homesteaded he fenced a lane, with his property being on both sides. This was sometime before 1912. In his understanding, it was dedicated as a county road as an extension of Clark Creek Road and extended clear to the bottom. In the 1920s and early 1930s it was maintained clear into Little Buffalo. It was abandoned across his property to Little Buffalo in January of 1946. Commissioner Notbohm stated that before 1946, Holmes Gulch was the main road. Sometime after 1946, Holmes Gulch was gated and everyone forgot it was a county road. Ted stated that in 1946 the Armagost dam washed out and it washed out the road. The county repaired the road, and this was just below the Armagost's gate. Commissioner Notbohm stated that at a road meeting, one of the crew stated that the County had replaced a culvert right below the second gate in 1980.

Mark Krpan stated one thing has been left out of the discussion of this dispute, and that is where the road crosses mining claims. He stated that he can find no record that it is a county road where it crosses the claims. This needs more research, and they need more information than the road has been graded. Commissioner Lythgoe stated that this is why they are discussing this. The County adopted a resolution in 2002. At that time, they took a look at all the roads in Jefferson County. There were a lot of roads that had records that supported that they are a county road, and some that had records that made sense that they were a county road. He agrees that this will take more research, but per the action taken in 2002, this is a county road. That being said, the Commission knew that if people came forward to dispute anything in the resolution, it would be up to them to provide information that it is not a county road. Title insurance is not necessarily proof of anything, as far as it relates to easements and roads. If it is in fact not a county road, there will need to be evidence. Mark asked that if information from the title company is not enough, what would be. Commissioner Lythgoe stated that they will have to research county records. He has heard that Mr. Llewellyn has done some research, but he was unable to reach him before this meeting.

Betty Ellis stated that she lives on Jackson Creek Road, which splits their property. She asked for clarification if the County is putting it back on the disputers to prove that this is not a county road. Commissioner Lythgoe stated that this is correct. Betty asked why it is their

responsibility, if the County makes a wrong decision. Commissioner Weber stated that, for the most part, were the Commission to make a wrong decision, especially given the historic use, it makes it a right decision per prescriptive use. Betty asked where they can find information. Commissioner Lythgoe stated that the Clerk and Recorder's office should have any information. Commissioner Notbohm stated that there was another issue up there regarding Lump Gulch and someone went to the historical society and was able to get some good information. He stated that a lot of these roads are very old, and are in his opinion public roads, if not county roads. Betty asked what is a public road versus a county road; she stated that she has a lot of questions. Commissioner Lythgoe stated that everyone has a lot of questions, that is why they are having this discussion. The Commission adopted the resolution because they are legally able to do so. A public road means that the public has a right to use the road; it is public access. The road that goes through the Schuele property goes on to access Forest Service and BLM property. Commissioner Lythgoe stated that it is his understanding that the buyer of the Armagost property wants to improve the road. If it is determined that the road is a county road, he will have to deal with the county to do this. If it is a public road, he will have to deal with the landowners.

Betty asked what sort of time frame they are looking at before a decision is made. Commissioner Lythgoe stated that there needs to be more research, hopefully on both sides. This is an important issue. On a good note, the new owner has agreed not to lock any gates until a decision is made. Commissioner Weber stated that the resolution will become permanent after five years, if there is no conflicting information presented. Mark asked if the road is determined to be a county road and the new owner wants to develop it, will the county require that it be 60 feet all the way up. Commissioner Lythgoe stated that Shane Schmaus is a good example of why that can't happen; his house and well are right on the road. The county wouldn't want to require that anything be moved. The road is narrow however, so he is not sure what the county would do. Mark stated that Shane's grandfather moved the road at one point. He has a problem with a 60-foot easement. Commissioner Lythgoe stated that it does allow for variances in the road standards. Mark asked that if there were plans for a subdivision further up the road, and the road bottlenecked at Shane's place, would that be enough to shut down the subdivision. Commissioner Lythgoe stated that he couldn't answer that at this time.

Matt stated that county roads generally have a 60-foot easement, but easement used to be the use of the road. There are mining claims with a house, and the road is there for the use of the mines. The reason this road was added to the 2002 resolution, it was designated by the use of the road, it was already a prescriptive easement. Per prescriptive case law, this road certainly qualifies. They simply can't shut down a road that is getting public use. He also noted that there has been road department maintenance above the mining claims. This is complicated, but the county has the responsibility to keep public access. Matt noted that there are also other issues developing out of the 2002 resolution. There are ways to solve the landowner's issues; a petition to abandon the road, for instance.

Commissioner Lythgoe noted that the Commission held a lot of public meetings before the resolution was adopted and no one came forward at that time. While the Commission felt comfortable with the resolution at that time, they also understood that people might come forward in the future.

Dean Ellis stated that it is his understanding that if a road is a county road, you don't pay taxes on the portion of property taken by the road. He stated that they do pay taxes on the entire area. Commissioner Weber agreed that there are no taxes on the area of a county road.

Ted Schuele stated that he has a property assessment from 1994 that shows two acres taken off for a county road. Also, state records still show three acres coming off the tax assessment for the Armagost property.

DISCUSS STRUCTURE FIRE PROTECTION FOR PROPERTY OWNERS NOT LIVING IN A FIRE DISTRICT

Commissioner Lythgoe stated that the County is responsible for wild land fire protection, and there are agreements in place to deal with this. If costs are involved in fighting a fire, the County is responsible, and has reimbursed the volunteer fire departments for gas, etc. that have responded to wild land fire outside of a district. However, the County is not responsible for structure protection. Commissioner Lythgoe stated that when you first look at the map it looks bad, but when you figure in forest areas, it is not as bad. There are some structures there however. There are people who live in the forest who pay the state a fee. DNRC, BLM and the Forest Service will fight fires in the area and will try to protect structures. However, if a structure catches fire, they aren't going to put it out. They have asked the question of insurance companies and the fire warden, how best to get insurance. People can get fire insurance, but will get an ISO rating of 10. In contrast, in the Montana City area, the ISO rating is 7. The quandary before the Commission is how or if the County is to deal with structures that are out of a fire district and need fire protection. Fire departments are not obligated, and can decide not to respond. Mr. Sims brought it to the Commission's attention that there are a lot of houses out there that aren't covered. Commissioner Lythgoe stated that he also spoke with Bonnie that morning about how to identify districts. Using school or voter districts is not a good solution.

Commissioner Lythgoe stated that he is not sure that they can do anything regarding the past, but they can require new subdivisions be in a district, either by forming a new district or by contracting with an existing district. According to Pat, this is what Lewis and Clark County did before forming a county-wide fire district. He stated that he is not sure how to solve the problem other than to go forward with subdivision regulations. Commissioner Weber stated that the problem with this is that while they can require a developer to be in a district, they can't require that a fire department take their equipment where the new subdivision is. They can't force the fire district to take a new subdivision into the district. Commissioner Lythgoe stated that according to the fire council, some fire districts don't want to expand, but for a fee, they would be willing to cover a new subdivision. The fire council indicated that they do bill for response to fires outside of fire districts. Montana City does this, and they have had no problem with getting paid.

Bob Simms stated that there seems to be some distinction between wild land fires and structure fires; but when someone calls in a fire, dispatch does exactly the same thing. You are then asking the guy driving the truck to decide if they are going to respond. The County is required to provide protection, and it is not fair to leave it up to the driver. Response is the same down the

line, and there needs to be a county policy of how to handle this. Commissioner Lythgoe stated that he understands what Bob is saying, but he is not sure that the County can require, per policy, that a fire department responds. He doesn't feel that forming a county-wide fire district is a good idea. When he and Bonnie spoke, they looked at the map with the question of how to define jurisdiction and set boundaries. They could draw imaginary lines and have the fire departments go to the residents to see if they want to be annexed. Bob stated that if the county were to establish a policy that if a fire happens outside of a district, the county will charge a certain amount, it would encourage homeowners to join a fire district. He feels that the fire departments will not refuse.

Commissioner Lythgoe asked Matt and Bonnie if it would be legally possible to create such a policy. Bonnie stated that the person who doesn't belong to a fire district doesn't necessarily get a free ride; the fire departments have the ability to bill people. Bob stated that the fire departments are not in the business of billing, they are in the business of putting out fires. Bonnie stated that her office can do the billing for the fire departments. Matt stated that if the Commission could have all of the fire departments comes up with a set response fee, and people actually knew that amount, the County could establish a fee structure. He feels that a policy could be set, with the cooperation of the fire districts. Matt stated that legality is not so much an issue, if the fire districts can agree. The County can assess a fee. As long as the fire departments agree, he sees no problem with legality.

Commissioner Notbohm stated that there could be other problems that they need to be aware of. In Clancy, there was a new subdivision up Warm Springs that was denied entrance into a fire district because there was no access at times. He asked if it is possible in doing a subdivision to make it a condition of approval to join a fire district. Matt stated that they would need to look at it on a case-by-case basis. Someone needs to look at this as a part of the subdivision process, but the county could be on thin ice. The subdivision can contract with the fire district, or the fire district could decide to annex. Commissioner Notbohm asked, regarding Warm Springs, the legality of refusal. The fire department stated that they would try to respond, but the roads don't always allow for this to happen. Commissioner Weber then questioned the decision to contract with a fire department, and then they can't respond due to road conditions. He questioned what the responsibility would be. Matt stated that fire departments don't have to respond, and if they do the homeowner will be billed.

Commissioner Lythgoe stated, that after listening to this discussion, the option that Matt presented makes the most sense. It will be best to get with the fire districts to develop a fee schedule and make it public, rather than try to do something subdivision by subdivision. Matt stated that it will be important to have in the policy that all are encouraged to be in a fire district. Commissioner Weber stated that he is concerned regarding the fact that different districts mill different amounts and would have to travel varying distances. Matt stated that there would be a basic response fee, plus mileage, etc. Commissioner Lythgoe stated that they need to provide for fees over the minimum.

Bob stated that the dispatchers know where the fires are, and they don't need to involve the fire departments in billing. Bonnie stated that the county probably will already have record of a fire,

but may not know other costs, such as time spent. Commissioner Lythgoe stated that most fire departments will not have a problem with submitting a bill to Bonnie to process. Bonnie stated that when they went through the fires of 2000, all the fire departments were willing and able to fill out the forms and get them submitted.

Commissioner Notbohm stated that he hasn't looked at his tax bill and what is paid. He asked that if someone is in a district, would they be billed extra if they had a fire. Commissioner Lythgoe stated that they are not. Commissioner Weber stated that this may motivate people to join a fire district. Commissioner Lythgoe stated that there is a fallacy with this; the insurance will pay, so this is not a true motivation to be annexed into a fire district. He stated that this is on the agenda for the next meeting, but he will probably take this to a fire council meeting before the Commission makes a final decision.

DISCUSS AND DECIDE ON SIGNING FOR COUNTY ROADS

Commissioner Lythgoe stated that an issue has been brought forward by Harlow's bus company. In the past, the County has been responsible for buying the posts, and possibly the schools have purchased the signs. The County has taken on the responsibility in the past to put up the signs for bus stops. They have discussed this with Ben and he has contacted Mike Benson at Harlows. Ben has agreed to install the critical signs. Commissioner Notbohm stated that he spoke with Mike that morning, and the road department has already put up some of the signs.

Commissioner Lythgoe stated this issue isn't necessarily just about school signs, but all signs. Ben is not really interested in this being a function of his department, and the Commission needs to discuss at some point, maybe at budget time, contracting with someone to take care of signs. It is not the best use of road crew time and wages to be putting up signs.

DISCUSS AND DECIDE ON ISSUE OF TWO AIRPORT ROADS IN JEFFERSON COUNTY

Commissioner Lythgoe stated that the roads in question are actually called Airport Road and Airport Lane. Commissioner Weber stated that he had been informed of this by Carl. He noted that there has been a move to go back to historic road names. There are also 9-1-1 concerns. There is an issue in the Whitehall area where one road has four different names, changing each time it crosses another road. Emergency services and safety-wise, this needs to be addressed. Confusion could lead to problems. They need to standardize and avoid confusion. Commissioner Lythgoe agreed that from this point on they need to do that. He questioned if they need to go back and make some changes. Commissioner Notbohm asked Commissioner Weber if he is suggesting they change the name of some of these roads. Commissioner Weber stated that they may need to. Commissioner Lythgoe asked Commissioner Weber if he has a recommendation as it relates to that day's agenda. Commissioner Weber stated he feels that they need to deal with this issue globally. Commissioner Notbohm stated that Commissioner Weber should talk to the Sheriff's Office, as dispatch has to deal with this. Commissioner Weber stated that it is already part of subdivision regulations that road names will have continuity. Commissioner Lythgoe asked how he proposed to deal with this. Commissioner Weber stated that they need to work with rural addressing and do a survey to decide which road names need to be changed. Commissioner Notbohm stated that people will have a problem with having to change their address, and if they have a business, it could be costly. Commissioner Lythgoe

asked Commissioner Weber if he is willing to take this on. Commissioner Weber stated that he is. Commissioner Lythgoe directed him to confer with Harold. Commissioner Weber stated that they need to move forward and he feels that they can identify some roads that are a real problem. Commissioner Notbohm stated that he needs to discuss this with the Sheriff's Office first.

MEETING ADJOURNED

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

TOMAS E. LYTHGOE, CHAIR

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER